

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 03.03.2011*

+ **RSA No.59/2010 & CM No. 5461/2010 (for stay)**

KRISHAN LAL Appellant
Through: Mr. Prem Kumar, Mr. Girish
Kumar and Mr. Surjeet Singh,
Advocates.

Versus

KARTAR SINGH AHUJA Respondent.
Through: Mr. Keshav Dayal, Sr. Advocate
with Mr. Sanjay Kumar Singh &
Mr. T.S. Ahuja, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1 This appeal has impugned the judgment and decree dated 18.02.2010 which had reversed the findings of the trial Judge dated 17.09.2005 whereby the suit filed by the plaintiff Kartar Singh Ahuja seeking possession, damages and mesne profits qua the suit property i.e. premises No. IX/6107, old No. 513/26, main Road, Gandhi Nagar, Delhi had been dismissed. The impugned judgment had reversed this finding; suit had been decreed.

2 The case of the plaintiff was that Ram Lal was a statutory tenant in his shop at a monthly rent of ₹73.15 paise. His tenancy had been terminated vide legal notice dated 14.08.2000 (Ex. PW-

1/5) terminating its tenancy w.e.f. 30.08.2000. Ram Lal had admittedly died on 22.01.2001. Contention of the plaintiff was that the defendants who are the brothers of the deceased Ram Lal were not the tenants under him. They had not inherited the tenancy from Ram Lal; they were unauthorized occupants.

3 The defence of the defendants was that they were tenants in their own right; they did not claim themselves to be the legal representatives of their deceased brother. This was specifically contented in para 4 of the written statement. The defence of the defendants as is evident from the perusal of the written statement is that after the death of Ram Lal, the plaintiff had approached defendant No. 1 and he had demanded a sum of ₹50,000/- from him as advance rent to treat him as a tenant i.e. w.e.f. the date of death of Ram Lal. Defendant No. 1 had in fact paid ₹50,000/- in cash to the plaintiff as rent of the shop. The defendants had thereafter acquired the status of independent tenants. It was specifically averred that they are not the legal heirs of Ram Lal and they are not claiming any interest in the property on that count; defendant No. 1 was a tenant of the property in his own right. This was a joint written statement of both the defendants. The defence set up by defendant No. 2 was also to the effect that he was not claiming any interest as a legal heir of his deceased brother.

4 On the basis of oral and documentary evidence led before the trial Judge, the suit was of the plaintiff was dismissed. The trial Judge was of the view that the defendants were class II heirs of deceased Ram Lal; they were entitled to inherit his tenancy rights; bar of Section 50 of the Delhi Rent Control Act (hereinafter referred to as 'DRCA') had become operable; since the rent was

below ₹3,500/-, the Civil Court had no jurisdiction to entertain the suit. Suit was dismissed.

5 In appeal, this finding was reversed. The impugned judgment had noted that the defence of defendant No. 1 in the written statement was that he was not claiming as a legal representative of deceased Ram Lal; he had waived this right; he had failed to prove that he is a tenant in his own individual capacity. The alternate claim of interest in the suit property through deceased Ram Lal could not be entertained in view of the specific averment in the written statement which was to the contrary; suit of the plaintiff had been decreed. For mesne profits, the matter was remanded back.

6 This is a second appeal. It is yet at its admission stage. On behalf of the appellant, it has been urged that a substantial question of law has arisen as the impugned judgment could not have reversed the finding of the trial Judge on the finding of waiver. It is pointed out that although admittedly in the written statement, defendant No. 1 had taken a stand that he is not claiming his right in the tenancy as being inheritable yet the impugned judgment had wrongly held that the appellant had waived this right; question of waiver could not arise where a party is not aware of his legal right. Learned counsel for the appellant has placed reliance upon AIR 1935 Privy Council 79 Dawsons Bank Ltd. Vs. Nippon Menkwa Kabushihhi as also AIR 1961 Calcutta 65 Nathmull Tolaram Vs. Killa & Co. to support his submission that waiver is an intentional relinquishment of a known right; in the instant case, the appellants were not aware that they had a right of claiming inheritable status in the tenanted premises; question of

waiver would not arise. Reliance has also been placed upon AIR 2003 SC 1475 Sarwan Kumar & Another Vs. Madan Lal Aggarwal to support his submission that in these circumstances where the status of the appellants stood proved as tenants, jurisdiction of the Civil Court is barred. There is no dispute to this proposition that once relationship of landlord-tenant has been established and the rent is below ₹3,500/-, jurisdiction of the Civil Court is barred.

6 Arguments have been opposed.

7 Perusal of the record shows that the specific averment of the defendants in the written statement which is not at one part (but the entire body of the document) that defendant No. 1 is a tenant in his individual capacity qua the plaintiff. His contention was that after the death of his deceased brother Ram Lal, he wanted to continue the business in the shop and he had approached the plaintiff and on an agreement had paid a sum of ₹50,000/- in cash to the plaintiff pursuant to which a new tenancy had been created in his favour. Stand of defendant No. 2 was also to the same effect. Both the brothers i.e. defendant No. 1 & defendant No. 2 had stated that they were not claiming inheritable status qua the suit property; they were not claiming themselves to be the legal representatives of deceased Ram Lal.

8 Admittedly there was no documentary evidence produced by defendant No. 1 to substantiate his submission that he is a tenant in the suit property. The sole document proved by him was Ex. DW-2/1 which was a rent receipt dated 25.04.2001 which clearly on the first page of the document had noted that Ram Lal had since died, this was rent tendered by defendant No. 1 on behalf of Ram Lal and rightly held so. The status of defendant No. 1 as a tenant could

not be established. The specific averment in the written statement of both the defendants that they are not claiming any interest in the property as legal heirs of Ram Lal and the version set up by defendant No. 1 that he had in fact paid a sum of ₹ 50,000/- in cash to the plaintiff qua his individual status as a tenant had been rightly adverted to in the impugned judgment; the impugned judgment had rightly noted that a defence could not now be taken that defendant No. 1 is claiming his right in the suit property as a class II legal heir of his deceased brother. He was estopped from doing so. A party could not be allowed to approbate and reprobate; he can not blow hot and cold in the same breath. There was a clear and categorical version of the defendants in their written statement that defendant No. 1 was an independent tenant; he was not claiming inheritable status through his deceased brother. No contrary argument could be entertained. The judgment of Dawsons Bank Ltd. and Nathmull Tolaram are distinct on facts. They are on the principle of waiver. The terminology used in the impugned judgment that the defendant had waived his right may not be a correct phraseology but that does not give any right to the appellant to raise the argument which is now sought to be urged. He is estopped from doing so.

9 Substantial questions of law have been embodied at page 10 of the body of the appeal. They read as under:-

(i) *Whether the Civil Court has jurisdiction to try the suit and pass decree for possession against heirs of a tenant in view of section 50 of the Delhi Rent Control Act in the absence of pleading in the plaint that the defendant being legal heir of statutory tenants Ram Lal had knowingly given up/surrendered/waived his tenancy rights?*

(ii) *Whether the possession of heirs of a tenant holding commercial tenancy under Delhi Rent Control Act becomes unlawful and illegal after the death of the statutory tenants and cannot have heritable estate in the tenanted premises.*

(iii) Whether decree passed by the Civil Court would not be non-est having been passed by Court lacking jurisdiction as the only authority to pass a decree for ejectment of a tenanted premises, having protection of Delhi Rent Control Act by virtue of Section 50 r/w Section 3 (c) of the Act, is the Rent Controller.

(iv) Whether an appellate court can reverse the findings of the trial court on issue No. (3) without there being any evidence to show that the appellant had surrendered his tenancy rights under Delhi Rent Control Act knowing that he was conferred such a statutory right in law.

(v) Whether the Ld. Appellate Court could declare the statutory tenant in the suit property as "trespasser" even where the landlord permits the heir of the statutory tenant to remain in the suit property for more than 13 months after the death of the statutory tenant.

10 No such substantial question of law having arisen; appeal as also pending application are dismissed in limine. _

INDERMEET KAUR, J.

MARCH 03, 2011

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